IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Defective Special Appeal No. 102 of 2006

1. State of Uttaranchal through Secretary,
   Basic Education, Uttaranchal Shasan,
   Dehradun.
2. Principal,
   District Institute of Education & Training,
   Almora. ..... Appellants

Versus

1. Smt. Geeta Lohani W/o Sri M.C. Lohani,
   R/o Village Seema Post Office Patli,
   District Bageshwar.
2. Smt. Leela Joshi W/o Sri D.K. Joshi,
   R/o Utroura, Post Office Utroura,
   District Bageshwar.
3. Smt. Leela Rautela W/o Sri Yeshwant Rautela,
   R/o Village & Post Office Vilorie,
   District Bageshwar.
4. Smt. Vijaya Pant W/o Sri Ranindra Pant,
   R/o Gokul Niwas, Pokerkhali,
   District Almora.
5. Smt. Kamini Sah W/o Sri Pankaj Sah,
   R/o Malla Joshi, Khola,
   District Almora. ..... Respondents

Mr. N.B. Tewari, Chief Standing Counsel / Addl. Advocate General with Mr. K.P. Upadhyaya, Standing Counsel for the appellants.
Mr. B.D. Upadhyaya, Advocate for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. N.B. Tewari, Chief Standing Counsel / Addl. Advocate General with Mr. K.P. Upadhyaya, Standing Counsel for the appellants.

Mr. B.D. Upadhyaya, Advocate for the respondents.

2. They are heard on CLMA No. 13559 of 2006 – a petition for condonation of the delay in filing the appeal.

3. On due consideration of the submissions of the learned counsel for the parties and the grounds taken in the affidavit filed in support of the delay condonation application, we are satisfied that the appellants have succeeded in showing sufficient cause for the delay in filing the appeal.

4. Therefore, CLMA No. 13559 of 2006 is allowed and the delay, in filing the appeal, is hereby condoned.

5. As the learned counsel for the parties are prepared and willing to argue the matter finally, the appeal is finally heard.

6. The appellants have filed this Special Appeal against the impugned orders dated 25.06.2005 and 10.07.2006 passed in Writ Petition No. 826 of 2005 (S/S).

7. The respondents have filed the writ petition for the following reliefs:

> "1. a writ, order or direction in the nature of mandamus directing the Respondents to consider the candidature of the petitioners for Special BTC Training Course for appointment on the post of Assistant Teachers in Basic Schools in district Almora and Bageshwar as the case may be.
>
> 2. any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
>
> 3. award cost of the Petition to the Petitioners."

8. On 25.06.2005, the following interim order was passed in the writ petition:

> "Heard Sri B.D. Upadhyaya, learned counsel for the petitioners.
>
> Learned Standing Counsel accepts notices on behalf of the respondents. He shall file counter affidavit within a period of six weeks.

List thereafter.

Meanwhile, the candidature of the petitioners shall not be rejected if they have already applied for B.T.C. in the year 2001 and also have crossed the age for more than 40 years on 01.07.2004 in view of the notification dated 19.04.2005 and G.O. dated 19.03.2005 (annexure 5 and 4 of this writ petition)."

9. On the application filed by the appellants (respondents in the writ petition) for modification / clarification of the order dated 25.06.2005, following order was passed on 10.07.2006:

"Heard learned Standing Counsel for the State on the modification application by which the respondent has sought the modification / clarification in the order dated 25.06.2005 passed by this Court.

The order dated 25.06.2005 was passed in view of the Government Order dated 19.03.2005 and Notification dated 19.04.2005 (contained as Annexures 4 and 5 to the writ petition).

Learned Standing Counsel for the State has submitted that subsequently, the Government has amended the aforesaid G.O. and Notification by way of modification dated 07.04.2006 and on the basis of this modification, the petitioners are not entitled to be granted the benefit of the aforesaid G.O. and Notification issued on 19.03.2005 and 19.04.2005.

I do not find any force in the submission advanced by the learned Standing Counsel for the State. On 25.06.2005, the order was passed on the basis of the Government Order and the Notification which were in existence at that time. In case, if certain modifications have taken place subsequently, the same would have no effect on the order passed by me on 25.06.2005.

I, therefore, do not find any force in the modification application, the same stands rejected."

10. As the writ petition filed by the respondents is pending for hearing for the last more than one year and the respondents in the writ petition have already filed their counter affidavits, we direct that the writ petition, itself, be listed for final hearing in the week commencing 13th November, 2006 with the further direction that the operation of the impugned order dated 25.06.2005 shall remain stayed during the pendency of the writ petition.

11. With the above direction, the Special Appeal stands disposed of.

12. With the above order, CLMA No. 13560 of 2006 also stands disposed of.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
08.11.2006 08.11.2006

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